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PTO/SB/64/PCT (04-04)

Approved for use 03/31/2007.O MB 0651-0021

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**PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT
DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number
(Optional)
AM100780

First Named Inventor: Leah D. Fletcher

International (PCT) Application No.: PCT/US02/036123

U.S. Application No.: To Be
(if known) Assigned

Filed: November 25, 2002

Title: Alloiococcus Otitidis Open Reading Frames (ORFs) Encoding Polypeptide
Antigens, Immunogenic Compositions and Uses Thereof

Attention: PCT Legal Staff

Mail Stop PCT

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

The above-identified application became abandoned as to the United States because the fees and documents required by 35 U.S.C. 371(c) were not filed prior to the expiration of the time set in 37 CFR 1.494(b) or (c) or 1.495(b) or (c) as applicable. The date of abandonment is the day after the date on which the 35 U.S.C. 371(c) requirements were due. See 37 CFR 1.494(g) or 1.495(h).

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee
- (2) Proper reply
- (3) Terminal disclaimer with disclaimer fee which is required for all international applications having an international filing date before June 8, 1995; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee
☐ Small entity- fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status.
See 37 CFR 1.27.

☒ Other than small entity - fee \$ 1,330.00 (37 CFR 1.17(m))
2. Proper reply

A. The proper reply (the missing 35 U.S.C. 371(c) requirement(s)) in the form of
Transmittal Letter, Declaration and (identify type of reply):

Power of Attorney, Sequence Listing Disk, Rule 821(f), Abstract Pg. 1019,

☐ International Search Report, IDS with references, PT0-1449
has been filed previously on _____

☒ is enclosed herewith.

07/16/2004 GFREY1 00000151 011425 10501282

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[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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3. Terminal disclaimer with disclaimer fee

- ☒ Since this international application has an international filing date on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

See attached document with details regarding unintentional delay.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

July 8, 2004
Date

1-845-602-3144

Telephone Number

46,705

Registration Number, if applicable

J. Darrell Fontenot
Signature

J. Darrell Fontenot

Typed or Printed Name

Wyeth

Address

Five Giralda Farms, Madison, NJ

Address

07940

Enclosures: ☒ Response

☒ Fee Payment

☐ Terminal Disclaimer

☒ Attached sheets for details regarding unintentional delay.

First Named Inventor: Leah D. Fletcher

International (PCT)

Application Number: PCT/US02/36123

Filed: November 25, 2002 (PCT Filing Date)

Title: Alloiococcus Otitidis Open Reading Frames
(ORFS) Encoding Polypeptide Antigens,
Immunogenic Compositions and Uses Thereof

Attention: PCT Legal Staff
BOX PCT
Commissioner for Patents
2900 Crystal Drive
Arlington, VA 22202-3513

DETAILS REGARDING UNINTENTIONAL DELAY:
ATTACHMENT TO FORM PTO/SB/64/PCT -
PETITION FOR REVIVAL OF AN INTERNATIONAL
APPLICATION FOR PATENT DESIGNATING THE
U.S. ABANDONED UNINTENTIONALLY UNDER
37 C.F.R. 1.137(b)

The following details are presented to demonstrate that the entire delay in filing the Petition for Revival from the due date for entry into the U.S. national stage until the filing of a grantable petition was unintentional.

On November 29, 2001, Applicants filed United States provisional patent application serial number 60/333,777 bearing the title *Identification of Novel Alloiococcus Otitidis Open Reading Frames Encoding Polypeptide Antigens, Immunogenic Compositions and Uses Thereof*. On November 18, 2002, Applicants filed United States provisional patent application serial number 60/426,742 bearing the title *Novel Alloiococcus Otitidis Open Reading Frames (ORFs) Encoding Polypeptide Antigens, Immunogenic Compositions and Uses Thereof*. On November 25, 2002, Applicants filed international patent application serial number PCT/US02/36123, designating all countries including the United States, and claimed priority from provisional applications 60/414,526 and 60/426,742. On June 24, 2003, Applicants filed a Demand to have the international application proceed via Chapter II of the PCT. Therefore, the deadline for entering the national phase in the United States was set at 30 months from the U.S. priority filing, or May 29, 2004.

On April 21, 2003, I was hired as a new patent Attorney (James Darrell Fontenot Reg. No. 46,705) by Wyeth. Applicant's assignee is Wyeth Holdings Corporation a wholly-owned subsidiary of Wyeth. Coincident with my hiring, the attorney who drafted the above-cited priority applications was transferred into another department and the cases were subsequently assigned to my docket for prosecution.

It the normal practice of Applicant's assignee that its patent administrators handle filing of all National Phase applications except the National Phase United States application. The National Phase United States application is to be handled by the attorney to whom the case is assigned. In this instance, I was the attorney and a new employee to whom the case was assigned. In addition, this was the first National Phase application to occur on my docket. I mistakenly believed that the patent administrators would file the U.S. Application on or before May 29, 2004 when they also filed the non-U.S. applications. I had this belief because there was a docket entry on my foreign filing docket, which specified that patent administrators would handle filing. I was unaware of the distinction made by our patent department between filing of the non-U.S. applications and the U.S. application. To reiterate, I was confused by the entry on the foreign docket and mistakenly believed that patent administrators would also file the U.S. application. Unfortunately, I was incorrect and the U.S. application was not filed when the non-U.S. applications were filed on the 30-month date.

I first became aware of the failure to file the U.S. national stage application during the week of June 17, 2004 when I received a phone call from the patent administrator Margaret Doran inquiring whether the U.S. application had been filed. I then confirmed that no application had been filed by me in the United States. It was at this point that I learned that I was supposed to file the application. I am informed and I believe that subsequently, Wyeth is taking steps to prevent inadvertent failures to file U.S. National Stage applications and to prevent future unintentional abandonments of applications.

After the phone call on June 17, 2004, I immediately began the process of preparing this Petition for Revival and the application for filing. The interim time was spent as follows:

1) During the period June 21-25, 2004, the declaration and power of attorney was sent out to the inventors.

2) During the period June 21 through July 1, 2004, the Petition for Revival and associated documents were prepared.

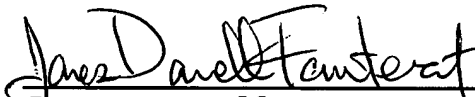
3) During the period July 2 through July 5, 2004, I was out of my office for personal business day and the July 4th holiday.

Because a U.S. national phase application based on international application PCT/US02/36123 would be treated as a post-GATT, no change in patent term would result from the late filing of this application. It is respectfully requested that this Petition to Revive be granted.

The undersigned Attorney for Applicants declares that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the instant patent application or any patent issuing thereon.

Respectfully submitted,

July 8, 2004
Date


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